

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM HAROLD NEWMAN,

Defendant-Appellant.

UNPUBLISHED

December 21, 2006

No. 261974

Saginaw Circuit Court

LC No. 04-024980-FH

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of and sentence for one count of accosting, enticing, soliciting, or encouraging a child for immoral purposes, MCL 750.145a. Because the trial court did not err in declining to suppress a handwritten statement defendant gave to the police regarding this case and appropriately scored the offense and prior record variables under the sentencing guidelines, we affirm.

Defendant's conviction arises out of an incident that took place at a tractor show in Brady Township in August, 2004. Fifteen-year-old Stephanie Koski attended the tractor show and camped at the show grounds with her family and some friends. On August 22, 2004, defendant appeared at the Koski's campsite and sat at their picnic table. After being shooed away by Stephanie's mother, he later approached Stephanie at a ride, reached his hand toward her, and asked her if she wanted to go f***.¹ The incident was reported to the police, and defendant was ultimately arrested and charged with accosting, enticing, soliciting, or encouraging a child for immoral purposes. Defendant was convicted as charged, and sentenced as a fourth habitual offender, MCL 769.12, to a prison term of 30 months to 14 years.

Defendant first argues that the trial court erred by refusing to suppress a handwritten statement he gave to the police regarding this case. According to defendant, he did not know the nature of the charges against him when he provided the statement, nor did he know he was signing a *Miranda*² rights and waiver form, as he did not have his glasses.

¹ Asterisks inserted by this Court.

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

We review the trial court's factual findings regarding a knowing and intelligent waiver of *Miranda* rights for clear error. *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000). The meaning of "knowing and intelligent" is, however, a question of law. *Id.* We review questions of law de novo. *Id.*

The sole witness at the suppression hearing was police detective Randy Pfau. Detective Pfau testified that he read the *Miranda* warning sheet to defendant and that defendant did not indicate any confusion as to those rights. Detective Pfau further testified that he did not recall any discussion with defendant about glasses, and that he informed defendant at least twice that defendant was being accused of soliciting a minor for immoral purposes. Detective Pfau additionally testified that he did not tell defendant what to write in his statement. The trial court obviously accepted the detective's testimony indicating that he orally advised defendant of his *Miranda* rights and the relevant accusation. There is simply no basis to conclude that the trial court clearly erred in doing so. Accordingly, defendant is not entitled to relief on this issue.

Defendant next argues that the trial judge erred in scoring offense variables (OV) 9 and 10, and prior record variable (PRV) 5 for his offense under the sentencing guidelines. We disagree.

A sentencing court's scoring of points under the sentencing guidelines is reviewed for an abuse of discretion. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). As long as there is some evidence of record in support, a scoring decision will be upheld. *Id.* The trial court's factual findings at sentencing are reviewed for clear error. *People v Mack*, 265 Mich App 122, 125; 695 NW2d 342 (2005).

OV 9 lists the scoring criteria for the number of victims involved. MCL 777.39. If there are less than two victims, zero points are assessed for this OV. A score of ten points is assigned when there are two to nine victims. Here, the trial court assessed 10 points on OV 9 based upon its observations that defendant later approached the victim's 20-year old sister and asked if she would help him find his vehicle in the parking lot, and that the victim's friends were not only with her when defendant approached her, but continued to see him in their vicinity after the incident. The trial court concluded that they were thus potential victims for purposes of scoring OV 9. Defendant asserts that the only minor victim was Stephanie, as defendant did not speak or direct his proposition to anyone but her.

While we agree with the trial court that the victim's sister and friends had reason to be traumatized by the defendant's behavior, we do not necessarily agree that they should be classified as victims for purposes of sentencing. There is only one named victim in the case, and defendant's actions were directed solely at her, according to the testimony of the witnesses. Assuming without deciding, however, that the trial court's scoring of ten points for OV 9 was in error, the error would be harmless and would not require resentencing because the correct scoring of OV 9 does not change the recommended guidelines range in this case. *People v*

Houston, 261 Mich App 463, 473; 683 NW2d 192 (2004), aff'd on other grounds 473 Mich 399; 702 NW2d 530 (2005).³

OV 10 considers whether a defendant exploited a vulnerable victim. MCL 777.40. Defendant argues that this section should not apply simply because of an age difference between the offender and the victim, as in the instant case, and that he should thus be scored at zero on this OV.

Ten points are to be assessed for this variable if the defendant “exploited a victim’s physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status.” MCL 777.40(1)(b). The trial court declined to reduce the score from ten points to zero points, concluding that defendant took his victim’s age into account in his decision to approach her, knowing that his age might give him greater influence over a child than over another adult. Because this is a reasonable view in light of the evidence, there is some support for the scoring. We therefore uphold the trial court’s scoring of OV 10.

PRV 5, the last variable challenged by defendant, requires that prior misdemeanor convictions be included in scoring certain sentences. MCL 777.55. The trial court scored PRV 5 at 20 points because defendant had more than seven total misdemeanor convictions on his criminal record. See MCL 777.55(a).

Defendant contends that the trial court erred in refusing to reduce its scoring of PRV 5 from twenty points to fifteen. Defendant argued at his sentencing that only six of his prior misdemeanor convictions should be included in the court’s scoring of PRV 5, because defendant did not have the benefit of counsel for certain offenses on his record for which jail was a possibility but not actually imposed. According to defendant, then, only those convictions obtained with benefit of counsel are valid for purposes of scoring PRV 5.

Defendant failed to cite any authority with respect to this assertion. A party may not merely announce his position and leave it to the court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), nor may he give issues cursory treatment with little or no citation of supporting authority. *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). Moreover, in *People v Richert*, 216 Mich App 186, 194; 548 NW2d 924 (1996), this Court stated that as there is “no right under the federal constitution to counsel in a misdemeanor prosecution where no incarceration is ultimately imposed, there is no such right under the Michigan Constitution.” Thus, the trial court did not err in considering

³ Specifically, the trial court scored a total of 20 OV points in this case. Even without the ten points allegedly improperly scored for OV 9, defendant would still be in the same OV level, i.e., OV Level II. As discussed below, we uphold the scoring of the remaining ten OV points for OV 10.

defendant's prior misdemeanor convictions apparently obtained without the benefit of counsel, and was not required to reduce its scoring of PRV 5 from 20 points to 15 points.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot